

Testimony before the House Commerce Committee
Tuesday, May 3, 2005
House Bill 4551

Chairman Huizenga & Members of the House Commerce Committee:

I would like to first and foremost thank you for taking up House Bill 4551 which amends the State Construction Code Act. This Legislation is part of the Creating Opportunities for Renewed Economies – CORE – package. The legislative package is aimed at helping invigorate downtowns in communities across Michigan.

Whether your district encompasses rural or urban communities, we all represent downtown areas across Michigan and we all know that these areas are not being used to their full potential for a number of reasons. Legislation in the CORE package, like House Bill 4551 will help revitalize these important economic, social and cultural centers. My legislation simply states and makes certain that multiple buildings can share an elevator, creating additional opportunities to accommodate residential or commercial purposes on upper floors of multi-story downtown buildings.

This legislation is supported by the Department of Labor and Economic Growth and the Bureau of Construction Codes as well as the Michigan Municipal League and Michigan Environmental Council. While no official positions have been given by the MI Association of Home Builders and MI Land Use Institute, in speaking with their legislative staff it's my understanding that both organizations are generally supportive of the intent of this legislation.

For the review of committee members, I have attached an article from the Main Street News that discusses how three different developers in Ypsilanti are cooperating on a venture to accommodate nearly 70 units of housing in the upper floors of their storefronts. House Bill 4551 will assist efforts like this by making certain that the Construction Code Act will never prohibit the sharing of an elevator between buildings in the future.

With that, I would be happy to answer any further questions that the committee members may have and thank you again for taking up this legislation.

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State Representative
105th House District



After 14 years of vacancy, the 1855 Wauregan Hotel in Norwich, Conn., a Main Street community, has found new life. This downtown landmark will be converted into 70 units of moderate-income housing and 8,000 square feet of ground-floor restaurant/retail space. The project is a model partnership, consisting of city and state funds, historic and low-income housing tax credit equity, and a \$350,000 loan from the National Trust for Historic Preservation (committed).

important to check those thresholds in your location.

When an elevator is required, the more units that share that elevator the more cost effective it will be.

Most states with accessibility requirements will also have a mechanism, like a state-level review board, to waive those requirements when the provision of accessibility is neither technically nor economically feasible. These review boards are often sensitive to the unique challenges of historic buildings.

In order to comply with accessibility requirements, building owners might consider sharing elevators, thereby reducing the cost of those systems. These opportunities may exist where buildings were constructed at the same time and have the same floor level. If floors don't match, ramping between them can be evaluated. Currently, in Ypsilanti, Michigan, three

property owners are cooperating on this approach to accommodate nearly 70 units of housing development in the upper floors of their live storefront buildings.

For large, "white elephant" buildings, such as old hotels or department stores, introducing housing may be more feasible. Although these buildings face the same fundamental challenges as smaller buildings, they are typically larger and thus have room for more units, which means more financial resources to deal with code compliance. And while similar change of use, separation of use, means of egress, and accessibility issues will arise, the potential reconfiguration of larger spaces will essentially equate to putting a new building in an old shell. Simultaneously, the greater flexibility of larger buildings offers greater opportunities for creating a variety of housing types.

In former department store buildings, the "changing of use" will likely require a total gutting of the space, providing the opportunity for loft-like spaces, while the more recent construction of most of these buildings may also make egress and other code requirements easier to meet.

Old hotels present a similar but distinct set of challenges. Because of their former quasi-residential use, numerous windows on the perimeter may allow for easy and sometimes exceptional layouts when converting a hotel to residences. The initial configuration of the building, however, may have an impact on the feasibility of turning it into housing. Sometimes existing corridors don't divide the floor space in a manner that provides enough depth on each side for a resi-

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GLOSSARY of DEVELOPER TERMS

AMI—Area Median Income
Measurement by the U.S. Department of Housing and Urban Development (HUD) that determines the average annual income based on family size and geographic location, used to determine eligibility for various housing financing programs, including HOME funds.

Development Team

The team of professionals assembled to implement a development, including, but not limited to, the property owner, attorney, architect, contractor, accountant, bankers, investors, brokers, and others.

Acquisition

The cost to acquire the property or building. Often, the costs associated with title insurance and holding onto the property for a limited period of time are included.

Hard Costs

Construction and related contractor costs for a project. Included in these costs are the labor and materials expended by the contractor when completing the work, the contractor's overhead and profit, and the permits and fees the contractor incurs during the project and in the course of business.

Soft Costs

Professional fees associated with a project, including but not limited to, attorney, accountant, architect, title, and insurance costs.

Total Development Costs

The total of three (3) cost components of a project—Acquisition, Hard Costs and Soft Costs, often referred to as TDCs.

Living Downtown

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Finally, in a stagnant market, financing for affordable housing can act as a catalyst to restore market forces. In 1995, the market-rate rents in the Old Town Main Street district of Lansing, Michigan, equaled the affordable limitations of \$400 to \$500/month, allowing developers to use affordable housing financing to provide market-rate housing. (See Housing in Old Town Lansing sidebar on page 6.) Today, Old Town's rents have risen to twice that for the same size units and rents for upscale units have waiting lists and are topping out at \$1,200/month.

WHERE BUILDING CODE COMPLIANCE AND HISTORIC PRESERVATION COLLIDE

When your downtown or neighborhood commercial district was built and how it was previously used can play a significant role in the introduction of housing and the application of building codes.

Traditional main street districts tend to be a collection of narrow two- and three-story buildings with one to three storefronts, along with a few "white elephants"—those larger, old department stores and hotels that have been vacant for years and are looking for new life. While every building is unique and will require a special solution to introduce or re-introduce housing, there are some lessons to be learned from the various building types a Main Street director is likely to encounter.

Age is a factor affecting the impact of building codes. In pre-1900 downtowns, residential uses were not common. Typically, the second and third floors of these buildings were used for gathering and meeting spaces, commercial uses or storage, and sometimes a small hotel. Most of these spaces are currently vacant and have been for decades. Post-1900 buildings, primarily commercial strips typically found in small, medium, and large cities, have a history of residential use and some of them may be occupied or more recently vacated.

For pre-1900 buildings that were not historically residential, the "change of use" to housing will require a higher level of code compliance. In states with flexible codes or new Rehabilitation Codes, building officials may find these helpful, but they are not a panacea. For "younger" buildings, where housing is currently or formerly a use, the conversion should be less complex.

Beyond age, the second factor is a building's size. For the narrower and shorter traditional main street buildings, there are three key code compliance issues of concern to Main Street housing developers. These issues are also present for larger building types, but are more easily resolved.

First is the separation of use between retail, entertainment, commercial, or office uses on the first floor and the proposed residential uses in upper stories. Typically, a two-hour fire separation is required and today, most building codes require sprinklers in any multi-use scenario. Introducing sprinklers will reduce separation requirements to one hour, and most existing plaster ceilings will comply. If the owner has a tin

ceiling without plaster, it won't be possible to achieve even the one-hour rating and the architect will need to identify alternative compliance strategies. Additional features, such as alarm systems, may be added to a building's overall fire safety and can help preserve the building's historic integrity while meeting code requirements.

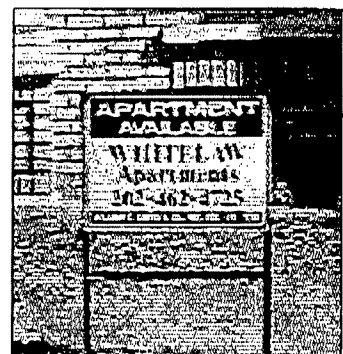
A second issue is the means of egress, or method of exiting the building. A second means of egress often equals inserting a second set of stairs, which can be problematic, especially if the first floor is already occupied with a going business concern. Generally, requirements for separating the exits will entail one stair in the front and one in the back, which may also be difficult in historic buildings. A bonus in post-1900 buildings, where residential uses are more common is that a second means of egress may already exist, making it easier to reintroduce residences to the upper stories.

The third and final challenge is the issue of accessibility. Although ADA (the Americans with Disabilities Act) does not apply to residential uses and the Fair Housing Act does not apply to buildings first used before 1991, some states have adopted accessibility requirements for new residential development. In smaller buildings, the limited number of units should limit the accessibility requirements, but it is

The leading design/build nonprofit developer of affordable homes in Washington, D.C., Manna is known for its ability to take an abandoned building or vacant property and convert it into new homes for low and moderate-income families. Manna purchased the badly deteriorated, yet historically significant Whitelaw Hotel in 1991, and turned the building into 35 apartments. The developer also restored the central dining room/ballroom of the Whitelaw and developed a historic exhibit to highlight the significance of the Shaw neighborhood as the center of Washington's African American cultural, economic and social life in the 1930's, 40's and 50's.



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dential unit. If the existing corridors are viewed as historically significant by the National Park Service (NPS), moving those corridors to accommodate new residential units may be viewed as inappropriate and detrimentally impact the availability of historic tax credits for the project.

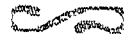
The larger white elephant projects are likely to be more interesting to traditional developers, whereas smaller buildings tend to be taken on by the existing mom-and-pop retailers and property owners. From a public policy perspective, these larger projects can address the affordable housing challenge by mixing the units into a larger quantity, diminishing the perceived impact and potential resistance.

While not a building issue, parking may be a zoning code issue. Moreover, even if your community does not require parking for residential uses, it is a practical issue. The parking available for residents must be realistic. This is a challenge municipal leadership must wrestle with when encouraging downtown housing.

In the final analysis, communities, owners, and developers must balance the delicate public purpose of creating or adding residential life to main street's upper stories with the life, safety, and health of the occupants as mandated by

building codes. These issues can be complex. We recommend the use of fully qualified architects and encourage them to work cooperatively with local building officials to find the delicate balance between preservation and rehabilitation.

LOOK LIKE, ACT LIKE, BE A DEVELOPER



Negotiating the potentially complicated maze of building regulations and pursuing the complex financing for affordable housing are not for the weak-spirited or faint of heart. But, hard work and complex issues are not new to most Main Street managers.

Main Street is a commercial district management program,

not a commercial real estate development program. Therefore, the tools and resources in your toolbox must expand if your Main Street organization is going to encourage and, potentially, take on real estate development. Main Street's Four Points create the framework, context, and environment for investment, but the Main Street organization is not typically the investor.

Even though the Urban Land Institute asserts that many developers are re-tooling their organizations to respond to downtown opportunities, most of the "developers" of main street housing will not be from the typical development industry, but rather the small, traditional entrepreneurs and property owners found in your downtown or neighborhood commercial district.

Working cooperatively with state or local housing development agencies and local building officials will be essential to successfully introduce or re-introduce housing on main street.

Taking an inventory of the commercial district's buildings, including square footage, tenant mix, rents (for commercial and housing uses), etc., is traditionally a task handled by Main Street's Economic Restructuring Committee.

In order to accomplish the annual work plans that are the backbone of any successful Main Street program, it is essential that you gather qualified and committed volunteers with knowledge and interest in each of Main Street's Four Points. Taking on the real estate challenge in your community will require you to assemble a similar, but unique collection of people with expertise specific to real estate development.

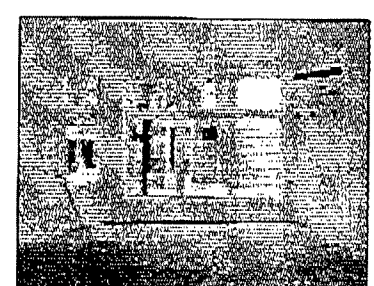
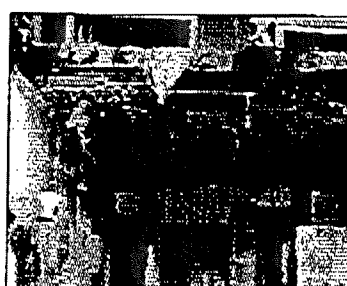
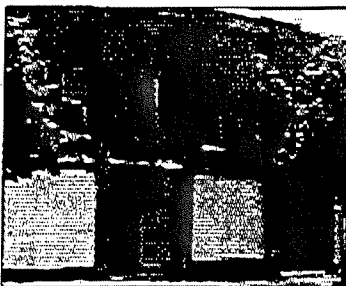
Relationships you will want to cultivate include, but are not limited to, an attorney and accountant with real estate expertise as well as architects and contractors with renovation/preservation experience. You'll want the insight of brokers, as well, and will need to establish relationships with people who have access to financial resources, including not only bankers but also county and state community development agencies where public resources to support housing development will likely be managed.

Finally, you will want to nurture your relationship with local building officials and ensure that your design and construction professionals are working collaboratively with them, so that the challenges discussed earlier can be addressed early in a project.

Initially, downtown property owners and potential developers will be the primary beneficiaries of these newly cultivated relationships. However, if your organization makes the conscious decision to tackle real estate development, many of these relationships will be contractual as you engage these professionals as formal members of a development team—the experts necessary to implement a specific project.

A Main Street program typically takes on the role of developer in the context of

Lowertown Lofts, Lansing, Mich. Below left, Loft exterior before and after rehabilitation; below right, loft interior before and after rehabilitation.



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